HIGH COURT OF DELHI : NEW DELHI

W.P. (C) No. 4400/2003 & CM No.7527/2003

Judgment reserved on: October 24, 2007
Judgment delivered on: December 12, 2007

Kendriya Vidyalaya Sangathan & Ors ...Petitioners
! Through: Mr. S. Rajappa with H.Jayaraman, Advocates.

versus

$ Gauri Shankar ...Respondent
^ Through: Mr.R.K.Saini, Advocate.

***CORAM:**

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI,J.
:

1. Kendriya Vidyalya Sangathan has filed this writ petition challenging the order dated 10.4.2003 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No.33/1999 whereby the Tribunal has allowed the aforesaid application of the respondent and quashed the order dated

5/8.5.1995 and 10.5.2002 whereby the Disciplinary Authority terminated the service of the respondent and the Appellate Authority confirmed the said termination respectively.

2. The respondent was working as a Group D employee of Kendriya Vidyalaya Sangathan since October 1984. In August 1994, he was working in Kendriya Vidyalaya, Masjid Moth. On 3.8.1994, after school hours at about 4.30 p.m, two students of Class IX, a girl and a boy approached him to have the classrooms opened for taking out their books. They took the keys from the Chowkidar after they were directed by the respondent to him, and went inside the main School building. It appears that after some time the Head Clerk came to the site. He desired to have his lunch box taken out and when he found the main building door locked from inside, he enquired from the Chowkidar for the keys. Thereafter, the respondent, the Chowkidar and the said employee tried to enter the school building but found that the said two students had bolted the building from inside. Apparently, the respondent entered the premises through a broken toilet window and discovered the two students after some search. They were questioned by him separately. It appears that after sometime the girl student left, but the boy student stayed back to request the

respondent not to report the matter to the Principal. In the meantime, the Head Clerk, Shri Bhat also left and the boy student was left in the school premises with the respondent.

3. On 5.8.1994, the boy student made a complaint against the respondent that when he was with the respondent on 3.8.1994, the respondent had made him touch his private parts. On the basis of the complaint, an inquiry committee was set up by the Principal of the School consisting of two PGT teachers and three TGT teachers, three of whom were females and two were males. The inquiry report came out with, inter-alia, following findings:

> "From the evidence recorded and statement submitted by the boy and Gauri Shankar, it is established that Gauri Shankar has misbehaved with the children. Gauri Shankar and the boy are equally guilty."

4. The inquiry Committee found that the respondent took the girl student to a different classroom while asking the boy student to wait and made inquiries from her about what they were doing. She was threatened that she would be medically examined. She consistently stated that nothing has happened and told respondent to leave her alone.

5. During the course of hearing we asked the Petitioner

to produce the original records, which were perused by us. The Petitioner has also placed on record the copies of the statements forming the original record relating to the case.

6. In view of the nature of the allegations made against the respondent about his misbehaviour with both the students in question, which amounted to moral turpitude involving exhibition of immoral sexual behaviour towards the two students, the Chairman of the Petitioner issued an order dated 5/8.5.1995 whereby it was held that it would not be fair to the students and their parents to hold a regular inquiry for major penalty since they have already undergone a traumatic experience, and consequently the holding of the inquiry under CCA (CCS) Rules was dispensed with. On the basis of the evidence already on record the Commissioner, Kendriye Vidyalaya Sangathan held that the same established the guilt of the respondent and that the continuance of the respondent in a Co-educational Institution like Kendriye Vidyalaya Sangathan, was held to be prejudicial to the interest of the students of the Sangathan. Consequently relying upon Article 81(b) of the Education Code of Kendriye Vidyalaya Sangathan, the services of the respondent were terminated with immediate effect.

7. On appeal, the Appellate Authority by even a more detailed order dated 10.5.2002 dismissed the same. The Appellate Authority held that there was no reason to suppose that the students had any enemity with the respondent and the respondent had even not established that any of his colleagues who were members of the Inquiry Committee, were enimically disposed towards him. In fact, the respondent had himself made a statement that he had taken the boy student inside the school building a second time, and bolted the door from inside which proves his immoral behavriour.

8. Aggrieved by his termination by resort to Article 81(b) of the Education Code, the Respondent approached the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) under Section 19 of the Administrative Tribunals Act, which has been allowed by the Tribunal by its impugned judgment.

9. Article 81(b) of the Educational Code reads as follows:

> "Termination of service of an employee found guilty of immoral behaviour towards students"
>
> Wherever the Commissioner is satisfied after such a summary enquiry as he deems

> proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude towards any student, he can terminate the services of that employee by giving him one months' or three months pay and allowanceds accordingly as the guilty employee is temporary or permanent in service of the Sangathan. In such cases, the procedure prescribed in holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kindriya vidyalaya Sangathan, shall be dispensed with, provided that the Commissioner is of the opinion that it isnot expedient to hold regular inquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Commissioner shall record in writing reasons under which it is not reasonable practicable to hold such enquiry and he shall keep the chairman of the Sangathan informed of the circumstances leading to such termination of service."

10. The Tribunal in its impugned judgment has held that the Petitioner should hold a fresh in-camera inquiry to avoid difficulties all around. The reasoning of the Tribunal is as follows:

> "Commissioner cannot be faulted on procedure. The fact, however, is that the circumstances of the case per se would not justify the above finding. The main reason indicated in Commissioner's order for dispensing with the enquiry is that the same would embarrass the students or their parents. However, the perusal of the file makes it clear that it is not a case where the applicant alone is at fault but both the students were also blameworthy to some

> extent. It is also on record that the parents of the children are aware of their relationship. Question of any embarassment to the children could not, therefore, have been invoked. In this case, the services of the applicant have been dispensed with on the basis of some allegation made by two students, whose conduct also left much to be desired. Only on enquiry would have brought the truth and therefore, invoking of Article 81(b) of the Education Code was not sufficient. Decision thus taken was faulty as principles of natural justice have been violated and the same has therefore to be set aside. This, however, is a case where the applicant's conduct appears to be tainted and therefore a fresh enquiry is called for by holding an in-camera enquiry to avoid difficulties all around."

11. Learned Counsel for the Petitioner submits that the impugned order passed by the Tribunal is laconic inasmuch as the Tribunal has shifted its focus from the conduct of the Respondent to that of the two students. The Tribunal has also completely failed to appreciate that the conditions prescribed for invoking of Article 81(b) of the Education Code, in the opinion of the Commissioner, Kendriya Vidyalaya Sangathan stood fulfilled and that it was not a case where the satisfaction of the Commissioner could be said to be without any basis or cogent material. On the other hand, learned counsel for the Respondent argued that the guardians/parents of those two students involved in the incident

were also aware of their relationship and he also suggested that, most likely, they have even got married on attaining adulthood.

12. In our view, the Tribunal has fallen in grave error bordering on perversity in making the aforesaid observation and allowing the O.A. in the facts of the present case. The question was not whether the conduct of the students involved in the incident was blameworthy or not. It is not their conduct and relationship which was to be examined, if an inquiry were to be held. It was the conduct of the Respondent in relation to the two students which was in question and was the cause of embarrassment to them and the parents of the students. The boy student had very clearly made the allegation that the respondent had made him touch his testicles 2-3 times, and thereafter even given him a hug. Admittedly the Respondent had bolted the door from inside, while he was with the boy student. There was absolutely no justification for the respondent to have taken the boy child inside the building and bolted the door from the inside. Furthermore, the conduct of the respondent in relation to the girl student was also not above board. She has stated that the Respondent has threatened her with exposing her to medical examination when she denied any wrong doing with the boy

student. From the record we also find that the respondent had even touched her body while he took her away to a different room.

13. The guidelines prescribed under Rule 81(b) for dispensing with holding of a regular inquiry under the CCS(CCS) Rules, 1965, is that the Commissioner should be of the opinion that it is not expedient to hold a regular inquiry on account of the serious embarrassment that may be caused to the student or his guardians or such other practical difficulties. This decision/opinion has to be that of the Commissioner on whatever preliminary inquiry he might have got contacted and on the basis of the complaint/responses before him. In a case like the present, it can hardly be said that it would not have been highly embarrassing for both the students in question as well as their guardians to have faced an inquiry into the conduct of the respondent wherein he is stated to have physically abused the two students. The Commissioner, in his impugned order has recorded the reasons as to why it is not reasonably practicable to hold an inquiry in the present case. The Appellate order is even more clear which records detailed reasons of the Appellate Authority for rejecting the departmental appeal against the respondent.

14. It was not for the Tribunal to have sat in judgment over the subjective satisfaction of the disciplinary authority and the appellate authority, which were based on cogent reasons and materials brought on record. Merely because the parents of the two students might have been aware of their relationship as noticed by the Tribunal (a fact, which is not borne out from the record), that by itself also was not enough to say that there was no question of any embarrassment to the students or their guardians in the holding of an inquiry. In our view, the present was a fit case where article 81 (b) of the Educational Code was rightly invoked by the Petitioner. This appears to us to be a case where the Respondent tried to exploit the vulnerable situation in which the two students found themselves. We are sorry to say that the Tribunal has acted with complete indifference and lack of sensitivity in making its aforesaid observations and we have no hesitation in setting aside the impugned order.

15. In such like matters, the School administration is entitled to show zero tolerance. Parents send their children to school on the trust and belief that their wards are safe from such exploitation at the hands of teachers and other staff of the school and that the school administration shall protect them against such

exposure. If such conduct is tolerated or overlooked and treated with leniency, it would not only encourage others to indulge in similar misadventures, but also erode the confidence of the parents who send their young boys and girls to school.

16. Our attention has also been drawn to a decision of the Supreme Court in ***Director, Navodaya Vidyalaya Samiti & ors vs. Babban Prasad Yadav and Anr.*** 2004 (2) SCALE 400 in Special Leave Petition (C) No.9808/2002. Though this case was related to Navodaya Vidyalaya Samity, Rule identical with Rule 81(b) was invoked by Navodaya Vidyalaya Samity to terminate the services of the Respondent in that case. The Supreme Court, in relation to the said rule observed:

> "All that is required for the court is to be satisfied that the pre-conditions to the exercise of power under the said rule are fulfilled. These preconditions are (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was prima facie guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid."

17. The Supreme Court also referred to its earlier decision in ***Avinash Nagra vs. Navodaya Vidyalaya Samiti and Others***, reported as 1997 (2) SCC 534 wherein the court has observed as follows:

> "With a view to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposer at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student etc. involving misconduct or moral turpitude, resolution prescribing special summary procedure was proposed and published by notification dated December 23, 1993, after due approval of the Executives of the respondent-Samiti. The Minister of Human Resources and Development, Government of India is its Chairman. It is seen that the rules wisely devised have given the power to the Director, a highest authority in the management of the institution to take decision, based on the fact situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf."

18. The Court further observed -

> "In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the

> services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls for tardy process of cross- examination."

19. Accordingly, we quash the impugned order dated 10.4.2003 passed by the Tribunal in TA No.33/1999 and dismiss the said TA filed by the respondent while upholding the order of termination and appellate order passed by the Petitioners. In C.M.No.7527/03, interim stay of operation of the impugned order was granted on 26.8.2003. The same was continued from time to time. The same stands disposed of in terms of this judgment. Parties are left to bear their own costs.

VIPIN SANGHI
JUDGE

A.K. SIKRI
JUDGE

December 12, 2007
P.K. BABBAR